

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**PROTHERICS, INC.**

**Plaintiff,**

**v.**

**HON. DAVID J. KAPPOS,  
Under Secretary of Commerce for  
Intellectual Property & Director  
of the United States Patent &  
Trademark Office**

**Defendant.**

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**Civil Action No. 1:09-cv-01545-ESH**

**UNOPPOSED MOTION FOR REMAND**

Defendant the Honorable David J. Kappos, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (“Defendant” or “USPTO”), by and through undersigned counsel, respectfully moves the Court to remand the above-styled action to the USPTO for further proceedings. On May 5, 2010, pursuant to Local Civil Rule 7(m), counsel for Defendant, AUSA David C. Rybicki, contacted Plaintiff’s counsel, Lawrence Green, Esq., who indicated that he does not oppose the relief requested herein.

Plaintiff Protherics, Inc. (“Protherics”) brings this action against USPTO pursuant to 35 U.S.C. § 145 and challenges the USPTO’s rejection of the invention claimed in U.S. Patent Application Serial No. 08/405,454 (“the ‘454 Application”) as obvious in view of the prior art under 35 U.S.C. § 103. In its complaint, Protherics alleges it has new evidence not of record in the USPTO establishing the patentability of its claimed invention. See Complaint ¶ 24.

Having reviewed the prosecution history of the '454 Application along with Protherics' allegations regarding its new evidence in preparing to answer the complaint, the USPTO believes that remand to the agency is warranted. Remand will allow the agency to consider Protherics' new evidence in the first instance and to evaluate whether that new evidence establishes the patentability of Protherics' claimed invention. The USPTO therefore respectfully moves the Court to remand this case to the agency and to close the case administratively pending further proceedings in the agency.

Should the Court see fit, the USPTO also respectfully submits that it will provide the Court with a report regarding the status of the '454 Application within thirty (30) days of a final decision by the USPTO concerning the patentability of Protherics' claimed invention.

Dated: May 10, 2010

Respectfully submitted,

RONALD C. MACHEN JR., D.C. Bar #447889  
United States Attorney  
for the District of Columbia

RUDOLPH CONTRERAS, D.C. Bar #434122  
Chief, Civil Division

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United States Patent & Trademark Office

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**[PROPOSED] ORDER**

Upon consideration of defendant's Unopposed Motion for Remand, and the record herein, it is hereby **ORDERED** that the joint motion BE, and it hereby IS, **GRANTED**; and it is further

**ORDERED** that the matter is administratively closed pending further proceedings in the agency; and it is further

**ORDERED** that this matter is **REMANDED** to the United States Patent and Trademark Office for further proceedings.

**SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2010.

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ELLEN SEGAL HUVELLE  
United States District Judge